No. 72-147

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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1972

BOB BULLOCK, ET AL., APPELLANTS

v.

DIANA REGESTER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

APPELLEE'S BRIEF

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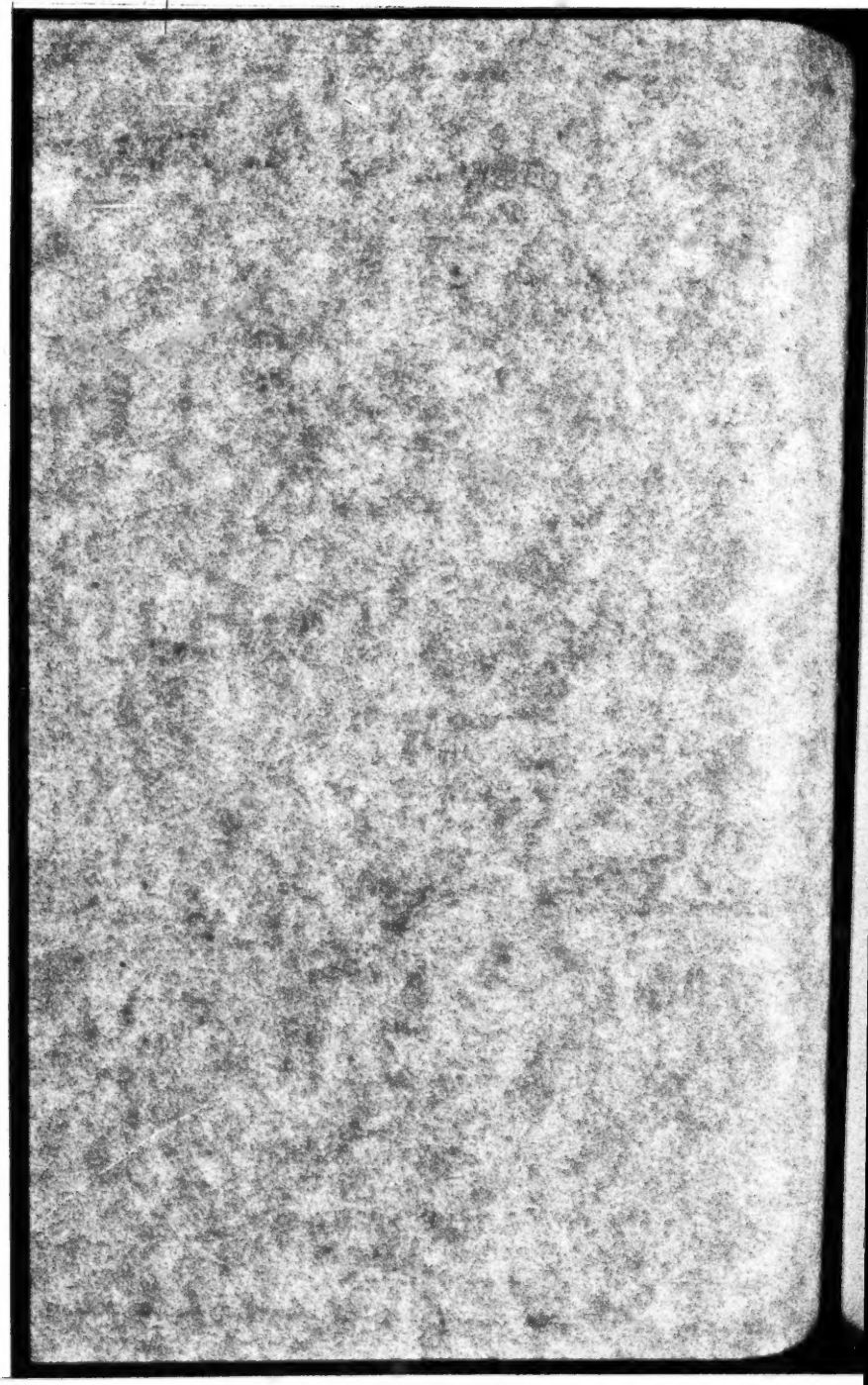

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Bob Bullock, Et Al., Appellants

Versus

Diana Regester, Et Al., Appellees

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BRIEF OF APPELLEES THELMA WASHINGTON, ET AL. AND GEORGE L. ALLEN, ET AL.

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JURISDICTION

The case before this Court is the result of four (4) consolidated actions resulting from four (4) separate cases filed in four (4) separate district courts. Members of several classes were permitted to intervene, both individually and in their respective capacities, and to maintain their actions as class actions. The classes included: (1) black citizens and voters of Dallas County, (2) Mexican-American citizens and voters of Bexar and Dallas Counties (as well as other counties), (3) Republicans citizens and voters of Dallas County, (4) poor and middle class citizens of Dallas County, desiring to vote for and run for the office of State Representative, (5) white, black, and Mexican-American Citizens and voters are members of the AFL-CIO, an unincorporated association composed of working men and women throughout Texas, and (6) certain black office-holders in Dallas County. (A. Jur. S 4A).

The Motions to intervene were granted only with respect to the individual and official capacities of the intervenors. (A. Jur. S. 4A) The Motions to sue or to intervene as classes were denied in the interests of sound judicial administration of the four cases and the pleadings were amended to eliminate references to class representation. F.R.Civ.P 23 (d) (4). (A. Jur. S. 4A-5A)

The Three judge Court was unanimous on all issues raised coterminously in the Tyler case and in the consolidated cases from the Northern and Western districts. (A. Jur. S. 5A)

An order setting up a Three Judge Court in each of the four cases entered on the 13th day of December, 1971, and consolidated for hearing and submission and transferred to the Austin Division of the Western District of Texas. The order also provided the following:

> "The Courts as constituted each have plenary power over all questions including, without limitation, the extent to which any one or more or all of the issues in each of the cases is for determination by a three-judge court or a single judge, and the nature, kind of character or relief to be granted or the form or content of any decrees and orders (whether separately or consolidated)." (A Jur. S. 7A)

At a joint pre-trial conference held at Austin, Texas, on December 22, 1971, the managing judge of the three-judge court entered an order providing for expedited discovery procedures in view of the filing deadlines of February 7, 1972, for candidates for office in Texas. It was also ordered that the

Chairman of the Republican State Executive Committee and the Chairman of the Republican Executive committee of Smith County be realigned as plaintiffs. At a final joint pre-trial conference on December 31, 1971, it was stipulated by the parties to all four actions that any evidence heard in relation to any one case could be considered by the Court with regard to all cases. (A. Jur.S. 8A)

Pursuant to the pre-trial Order, depositions of the members of the legislative Redistricting Board, the staff of that Board, and several oher persons, during and after the trial of this case, with the bulk of the depositions being taken during the week of December 27-31, 1971, in the office of the attorney General and others in Dallas and Houston, Texas.

Trial was begun before the Three Judge Court in Austin, Texas, on the 3rd day of January, 1972, and lasted for three and one-half days during which time the Court heard live witnesses, lay and expert, received numerous depositions and exhibits, which were admitted into evidence, attached to the final pre-trial order when no objections were made thereto. (R. 224-225) The Court considered the case for more than three weeks and issued a Per Curiam Opinion on January 28, 1972, (A Jur. S. 1A-62A) and an Order, dated January 28, 1972, (A Jur. S. 63A-64A), with Exhibits (A. Jur. S. 65A-82A).

District Judge Justice concurred "in the Court's opinion in all respects, with the exception of its refusal to grant relief in the action brought in the Houston Division of the Southern District of Texas by certain black voters of Harris County, challenging the Aeapportionment Plan of the Texas Senate as that Plan applies to Harris County." (AJur.S. 83A) District Judge Wood Concurred in part and dissented in part (A.Jur. S. 97A-108A), but with respect to the Dallas part of the Case concurred in the Court's Opinion, which will be referred to later in this Brief, footnote 10. Circuit Judge Goldberg concurred specially in the results of Section Four (4) of the Opinion, (A.Jur.S. 109A), which was not concerned with the Dallas County Multi-member District issue.

Application for stay of that portion of the lower court's judgment immediately implementing single-member districts in Dallas and Bexar Counties was presented to Mr. Justice Powell and by him Denied, with opinion, Noting that the only present necessity to consider a stay relates to the District Court's decision with respect to multi-member districts in Dallas and Bexar Counties. (App. 199H, 197H-201H). The State election process consequently proceeded in accordance with the

District Court's decision; primary and general elections using the redistricting plan for the House found to be deficient, except in Dallas and Bexar Counties, where the primaries were held pursuant to the single-member districting plans adopted by the Court, 405 U.S. 1201 (A.Jur. S. 197H).

Because of clerical errors, on the Motion of Plaintiffs, an Order was granted on the 8th day of February, 1972 making the necessary clerical corrections and errors. (A. Jur. S. 110A-113A)

Notice of Appeal was filed March 27, 1972 by the Appellants. (A.Jur. S. 114B-118B)

Motions to Dismiss or Affirm was filed with this Court by Plaintiffs and Intervenors, contesting the Jurisdiction of this Court.

This Honorable Court noted Jurisdiction on October 10, 1972 (————U.S.————); with the Appellants contending that this Court had Jurisdiction in this case under provisions of 28 U. S. C. Sections 1253 and 2101 (b).

CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED

The equal protection clause of the Fourtennth Amendment to the Constitution of the United States is involved, Article III, Section 26 and 28 of the Constitution of the State of Texas (A. Jur. S. 174E-175E), which provides for State Apportionment Plan of Texas in Representative Districts. (A.Jur.S. 118C-132C). Also involved is 28 U. S. C. Section 1253.

QUESTION PRESENTED

1. Whether the Multi-member District in Dallas County tends to and operates to minimize, dilute or cancel out the voting strength of Dallas County's Negro Minority?

STATEMENT

The Plaintiffs-Intervenors, Appellees herein, for whom this Brief is filed, are Members of the Negro Race, residents of Dallas County, voters and certain Negro Officer Holders, i.e., one being a Dallas City Councilman, one being a Trustee of the Dallas Independent School District and the third a State Representative of the Texas House of Representatives. Their concern is primarily with the issue mentioned hereinabove, but they have an overall concern with respect to the Reapportionment plan promulgated by the Legislative Redistricting Board on the 22nd day of October, 1971, the Constitutionality of same and its effect State wide. However, it is felt

that other Plaintiffs and Intervenors who have a more direct concern with other basic and State wide issues concerning the legislative redistricting plan published by the Board will address themselves to these issues, and it would only belabor the point and possibly unduly cause unnecessary confusion herein, which is not needed when one considers the size of the record in this case. Therefore, the Appellees, George L. Allen, et al and Thelma Washington, et al will limit and confine their Brief to the sole issue and question mentioned above. However, in doing so, there may be argument made concerning the rationality of the multi-member district adopted by the Legislative redistricting board for Dallas County as opposed to the single-member plan adopted for Harris County.

The Three Judge Court, in its Per Curiam Opinion, concluded "that the Dallas Plaintiffs have shown, in accordance with the standards laid down by the Supreme Court in the Whitecomb case—2, that a multi-member district in Dallas County tends to dilute or cancel out the vote of Dallas County's Negro Minority. Accordingly, we hold the use of a multi-member district in Dallas County unconstitutional." (A. Jur. S. 42A)

The Court below in reaching its decision found, among other things, that the legislative district created by the Legislative Redistricting Board for Dallas County comprises a multi-member district with a population in excess of 1,3000,000—3 (A.Jur.S. 37A); unlike the plurality system in Indiana, Texas has a strict "majority" requirement in the primary—4 (A.Jur.S. 38A); that whatever its constitutional status, it is clear that the majority system tends to strengthen the majority in a multi-member district (A.Jur. S. 38A); in combination with the majority requirement, there exists in the Texas political repertoire the "place" requirement—5 (A.Jur.S. 38A); that there exists no provision for at large candidates running from particular geographical subdistricts—6(A.Jur. S. 38A), that unlike the State of Indiana, Texas has a rather colorful history of racial segregation (A. Jur. S. 38A); that the number of black community residents who have beeen legislators is not in proportion to grettoo residents, but also that the black community has been effectively excluded from particivation in the Democratic primary selection process (A.Jur.S. 40A); that it is extremely difficult to secure either a representative seat in the Dallas County delegation or the Democratic primary nomination without the endorsement of the Dallas Committee for Responsible Government (hereinafter referred to as the DCRG) (A. Jur.S. 40A); that white candidates endorsed by the DCRG

in either a primary or general election can win in a county-wide race without appealing to the Negro vote—7 (A.Jur.S. 40A); that the Negro community in Dallas County participates in the selection of the Democratic primary candidates only in the recruiting process (A.Jur.S. 40A-41A); that the plaintiffs (Appellees herein) have shown that Negroes in Dallas County are permitted to enter the political process in any meaningful manner only through the benevolence of the dominant white majority. If participation is to be labeled "effective" then it certainly must be a matter of right, and not a function of grace (A.Jur.S. 41A); that the record evinces a recurring poor performance on the part of the Dallas County delegation concerning the representation of black interests in the Texas House of Representatives—8 (A.Jur.S. 41A); and that hostility toward the black community is still an integral part of Dallas County politics—9. (A.Jur.S. 41A)

Based upon these findings, the Court concluded that the use of a multi-member district in Dallas County violates the equal protection clause in accordance with the standards of proof enunciated in Whitcomb—10 (A.Jur.S. 40A)

ARGUMENT

These Appellees realize and understand that this Court has stated that it "deemed the validity of multi-member district systems justiciable, recognizing also that they may be subject to challenge where the circumstances of a particular case may operate to minimize or cancel out the voting strength of racial or political elements of the voting population.' Fortson, 37 9US, at 439, 13 L Ed 2d at 405, and Burns, 384 US, at 88, 16 L Ed 2d at 388. Such a tendency, we have said, is enhanced when the district is large and elects a substantial proportion of the seats in either house of the legislature or if it lacks provisions for at-large candidates running from particular geographical subdistricts, as in Fortson. Burns, 384 US, at 88, 16 L Ed d at 388. But we have insisted that the challenger carry the burden of proving that multi-member districts unconstitutionally operate to dilute or cancel the voting strength of racial or political elements. "Whitcomb 403 US at 143-144.

Appellees respectfully submit that they have carried the burden of proof required of the challenger in the Whitcomb case, in the instant case, as the Court below so found.

It is undisputed that Dallas County, at the time the multi-member District plan adopted by the Legislative Redistricting Board for Dallas County, consisted of more than 1,000,000, with a Negro population consisting of more than

seventeen percent (17%) living in Dallas County. However, the percentage living within the City of Dallas was even more dramatic in 1970, in that the percentage wa s24.9%—" almost one out of four inside the City of Dallas. (R. 202). Appellees' Exhibits 4 showed that the forty-five predominately Negro tracts in 1970 had a total population of almost 222,000, and Appellees" Exhibit 5 showed that the Negro population of these fifty-five predominately Negro tracts, was close to 198,000, which meant that close to ninety percent of the area was Negro. (R.208) This area as demonstrated by the record was the South and Southwest part of Dallas.

The Record, Exhibits (Some 90 or more—R.224) and Depositions all showed that under the legislative redistricting plan Dallas County was entitled to Eighteen (18) legislators, all of whom were to be elected by place but on an at large basis and not from single member particular geographical subdivisions. Under the holdings in the **Fortson, Burns,** and **Whitcomb** cases, the multi-member district, if large as is Dallas County, tends to operate to minimize or cancel out the voting strength of racial or political elements of the voting population if it lacks provisions for at-large candidates running from particular geographical subdistricts. In Dallas Council, the plan approved by the legislative Redistricting Board left the County multi-member with no particular geographical subdistrict which would determine residency requirements of expected applicants.

The total Record before this Court and which was before the Court below would show that the real-life impact of multi-member districts on individual voting power in Dallas County has been sufficiently demonstrated, and particularly upon the Negro voter who is concentrated almost 90% in one area of the City and County. To support this, the record reflects that only two (2) Negro candidates have ever been elected to the Texas Legislature from Dallas County and in each case this was after they had been placed on the DCRG Slate.—11 Moreover, the record reflect that where Negro candidates have not been placed on the DCRG Slate, then they were unsuccessful.—12

The multi-member district in Dallas County, if not conceived as a purposeful device to further racial or economic discrimination, then it is unquestioned under the facts of the case before this Court that it was purposeful operated as a device to further racial or economic discrimination. No Negro or other minority candidate was slate by the DCRG in the Legislative Primary races until 1966. Prior to the slating

of the first Negro—13, the cost of running County wide, under the multi-member District, in Dallas County was astronomical and completed beyond the reaches of the average or above average Negro. The cost of reaching more than 1,300,000 by television, newspaper, radio and mailing was so exorbiant that, without the "slating" of the Negro candidate with the DCRG Team, as it was called, his chance of winning were nil, as evidenced by the loosing efforts of Berlaindr Bashear in 1970, for a seat in the Legislature. In fact, one of the successful candidates who were elcted to the legislature, Rep. Zan W. Holmes, Jr., testified he "could not have been elected if I had not had that (DCRG) support, financial and otherwise. (R. 424) Thus it is evident that the people that controlled the DCRG used and operated the multi-member district purposeful and as a device to limit the number of Negroes on the slate and before 1966, to keep them off altogether.

The Record reflects that under any fair single member plan that would be drawn, that the Negro minority would receive or be able at least to elect three (3) and possibly four (4) State Representatives, with capabilities to influence the outcome of the candidacy and election of a State Representative who was sensative to their wishes, in a fifth district. Appellants admit that "Numbers alone would indicate that about 3 of the presently apportioned 18 representatives for the County should be Negroes." (Jur.S. 21) Appellants further admit in their brief that the number of Negro residents who were legislators was not in proportion to the Negro population. However, the Appellants argue that the poor Negroes were not denied the right to participate in the political processes and to elect legislators of their choice. What the Appellants fail to say is that this participation occurs in the general election, when the contest has boiled down to any contested raced between the Democrats and the Republicians. It fails to take into consideration that there is a primary election in the Democratic party, wherein the DCRG sponsors candidates, supports them financial and otherwise, and slate them as a team. Appellants own witnesses show that the controlling Board of Directors of the DCRG, or its governing and selecting Body, consists of at least one and possibly two Negroes. One witness could not even give the name of one black in the DCRG, i.e., Utah Kirk. There is no evidence how these persons (Negroes, if more than one or any) are selected, what their powrs are in connection with the DCRG, whose sole reason is for determing who the legislative representatives from Dallas will be and will represent Dallas County in Austin, Texas. The fact that the Negroes in Dallas County were allowed the right to register or vote, choose the political party they desired to

support to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen in the Democratic party, misses the point and begs the question. The key is the fact that there is a group that is composed of members of the Democratic party, and operates with its sanction, for you cannot vote for the DCRG candidates unless you vote Democratic in the primary election, who have the power, both political and financial, to determine who will not be on the slate of the DCRG in the primary election. And it is in the Democratic Primary that the basic issue of who is going to run in November in the General Election is made. It is in the DCRG control primary that the poor Negroes and all Negroes that comprise that 90% area is denied the right to vote or register, if they wish, and to participate in the affairs of the DCRG or to even be equally represented on those occasions when legislative candidates were chosen. The Appellants, who had witnesses that could testify as to the activities failed and did not show that that 90% of the Negroes in the South and Southwest part of Dallas Couny participate in the affairs of the DCRG or was equally represented on those occassions when legislative candidates were chosen.

Moreover, the record in this case clearly showed that the 90% of the Negroes, living in the area referred to in Appellees' Exhibits 1 through 5, were regularly excluded from the slates of the DCRG. The DCRG, the controlling force in the legislative races in Dallas County, has slated only two Negroes, namely, Joseph E. Lockridge, Deceased, and Zan W. Holmes, Jr., who was "asked" to run in a special run-off election to fill Representative Lodgridge's remaining term. Even here it may be observed that the white majority DCRG was still pulling the strings and telling the Negro minority that they could have their one (1) place and not giving them an opportunity to seek elections on the slate for more than one position, or even determine who else would be on the slate.

Appellants argue that the Negro minority in Dallas County, under the multi-member district, could not be overlooked by the Democratic party in slating its candidates. This is true — in the General Election. But the General Election, as previously indicated, is not where the primary determination is made as to who will represent Dallas County in the Legislature, the make up of the delegation from Dallas or the number of Negroes on the slate. That determination is made in the Democratic Primary, where the Democratic Party allegedly stands to the side and take no part — thereby letting the DCRG become the dominant entity which will determine the slate for the Democratic Party in November.

And it is here that the DCRG can afford to overlook the Negro minority voters and in fact has overlooked the Negro minority, except recently in gratitutiously and benevolently slating One Negro on the Team in each primary election and not the Negroes' proportionate share. The Numbers along prove that the DCRG can completely afford, and has done so, to overlook the Negro Minority, when one considers 222,000 against more than 1,000,000 plus. These numbers along shows that under the multi-member district plan under existence before the lower Court's single member plan that the DCRG in the primary election could completely write off the Negro vote, determine who the candidates would be and proceed to elect them. Once the primary election was complete and the DCRG slate was chosen and became the slate for the Democratic party in the general election, the Negro had no choice but to vote for the Democratic slate, if that was his wish, or just go fishing. In other words, who the State representatives were to be, were predetermined without the area of Negroes previously referred to having any sa yso whatsoever. This is true also with respect to the other members of the slate who were not Negroes, because they were not consulted in the selecting process of the remaining members of the slate, and thereby have an opportunity to participate in the selection of white candidates that might be or would be considerate of their feelings, needs and wants. Under the facts of this case, it cannot be said that the failure of the Negro minority to have legislative seats in proportion to its population emerges more as a function of loosing elections than of built-in bias against the Ninety per cent (90%) Negroes living in South and Southwest Dallas County, under the multi-member district plan.

The record before this Court reflects that there were unique needs of the Negro minorities in Dallas County, and that the Negro elected on the slate to represent Dallas County was expected to represent the black community in Dallas County, Texas. (R. 428) Moreover, the other members, or the majority of them, do not share the sensitivity to the needs and aspirations of the black community. (R. 428-430). If state legislators were elected from particular geographical single member districts in Dallas County with residency requirements within that sub-division or sub-district, then the needs of that representative's district could be more easily made available to him, he would be more sensitivity to the needs of his district and more importantly of all, the people of the district would be able to know who their state representative was. They would not owe partial allegiance to 15 or 18 representatives

but to three or four, and in a pure single member district, based upon contiguousness, economic interests and etc., the representatives that were elected from the Negro Minority, and, drawn without any conditions or considerations of gerrymandering, would be entitled to at least three with a possibility of one other and the capabilities of influencing the type of candidate and the outcome in a fifth district. Under the multi-member district plan proposed by the Legislative Redistricting Board and forced upon Dallas County, this would not be true for the Negro Minorities in the areas designated in Appellees Exhibits 1 through 5, and designated as the area where more than 198,000 Negroes out of 220,000 live, but return Dallas County to the former domination—14 of the DCRG, who would continue their old ways of doing business as evidenced by the questioning of Earl Luna, Esq. Chairman of the Dallas County Democratic Party and the Attorney for Roy Orr, State Democratic Chairman, that they were going to put three Negroes on the Slate and had passed a resolution to do so. In other words, if the Lower Court's Order is Reversed with respect to Dallas County, and the Legislative Redistricting Board's plan for Dallas County to remain multi-member, then the performance of the Dallas County legislative delegation in being responsive to the needs of the Negro community on special issues of majority interest to that community would be the same and that response in the past, which had been low (R. 447-449), would continue. It would be the participating of the Negro minority in the recruiting stage and not participation in the overall scheme of deciding the outcome of the entire delegation in the primary. The multi-member District plan for Dallas County would allow the DCRG, in the primary where the issue of who is going to represent Dallas County in the State Legislature, to continue it same benevolent and paternalist attitude toward the Negro Minority in Dallas County.

Under the multi-member District in Dallas County, the Negroes' chance of influencing the election of an entire slate was not as significant as the guarantee of three Negro representatives of their choice, selection and who was sensitive to their particular problems, as evidence by the testimony of State Representative Zan W. Holmes, Jr., which would make him a more independent representative and better for all of Dallas County, Texas.

Appellees submit that an analysis of the evidence, and naturally the reasonable and credible admissible evidence, and not as Appellant's Brief infers, clearly demonstrates that

the Negro Community has been denied effective access to the political system and that their vote can be ignored in the primary election by the DCRG, whose winners are theen slated by the Democratic Party. It is untrue that Negroes hold numerous county-wide offices — the only county wide held office at the time of Appellants' Brief was one State Representative, unless Appellants were including in this figure maids, janitors, maintenance men, message carriers and other such type of persons who have no decision or policy making powers and not including persons with administrative ability. As to the other allegations, as to hearsay, rank conclusions and in luendos with respect to the Lower Court's Opinion, they are not worthy of replying to and one would not expect same in a brief to be filed before this Honorable Court. Appellees submit that the evidence and findings required by Whitcomb have been satisfied and that the evidence needed and outlined in Whitcomb has preponderated in the instant case.

In preparing this Brief on behalf of the Appellees herein, the guidelines and requirements of proof set out in Whitcomb have been taken into strictest consideration, and the Dallas case has been measured by those guidelines to ascertain whether or not the guidelines were met and the proof sufficient. Appellees submit that they have done both.

Appellees further submit that the Appellants cannot offer the same rationale for its apportionment of Dallas County as Harris County. The different treatment of Houston from Dallas refutes the Whitcomb rationale at the threshold. Neither has Appellants attempted to justify the different treatment of Houston candidates on the basis of Whitcomb because its own internal inconsistencies in its treatment of Texas cities erases the general Whitcomb rationale for maintaining multi-member districts in metropolitan areas and particularly Dallas. Kilgarlin v. Martin, 252 F. Supp. 404 (D. Tex. 1966), reversed in parsub nom Kilgarlin v. Hill, 386 U. S. 120 (1967) does not justify the rationale.

As the Court below stated:

> "Dallas County in 1971 fits all the elements of the Kilgarlin rationale for single-member districting, and yet Dallas remains a multi-member district, against the wishes of Dallas citizens we might add, while Houston has been subdivided even further than it was in the 1966 plan discussed in Kirgarlin. We can only conclude, as we did earlier, that there is simply no credibility left in the rationale advanced by the State in Kilgarlin. A

state that inexplicably abandons an allegedly' compelling state interest' only five years after arguing it can hardly raise it from the dead at this point in the apportionment process." (A. Jur. S. 34A)

Appellees submit that they have shown that the use of a multi-member district in Dallas County violates the Equal Protection clause in accordance with the standards of proof enunciated in Whitcomb.

CONCLUSION

For the foregoing reasons, the Appellants' Appeal should be dismissed for want of jurisdiction or, in the alternative, the Judgment of the District Court should be affirmed.

Respectfully submitted,

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By: 

E. BRICE CUNNINGHAM

PROOF OF SERVICE

The Undersigned, a member of the Bar of this Court, hereby certifies that a copy of the foregoing Brief of Appellees has this the 24 day of January, 1973, been served upon each counsel of record for Appellants in accordance with Rule 33 of this Court, by depositing the same in a United States mail box, with first class postage prepaid, addressed to said counsel at their post office addresses.

E. BRICE CUNNINGHAM

FOOTNOTES

1. A. Jur. S. refers to Appendix to Jurisdictional Statement. R. refers to the Record. Dep. refers to the Desposition. Jur. S. refers to Jurisdictional Statement.

2. Whitcomb v. Chavis, 403 U. S. 124 (1971).
Burns v. Richardson, 384 U. S. 73 (1966).
Fortson v. Dorsey, 379 U. S. 433 (1965).

3. Thus, Dallas County's multi-member district is approximately three times as large as a congressional district in Texas, almost twice the size of the multi-member district that the Supreme Court had before it in Whitcomb v. Chavis, and it has a population greater than that of fifteen states.

   The Dallas County multi-member district has a greater population than the following states: Alaska (302,173); Delaware (548,104); Hawaii (769,913); Idaho (713,008); Maine (993,663); Montana (694,409); Nevada (488,738); New Hampshire (737.681); North Dakota ,617,761); New Mexico (1,016,000); Rhode Island (949,723); South Dakota (666,257); Utah (1,059,373); Vermont (444,732); and Wyoming (332,416). (A. Jur. S. 37A-38A)

4. Virtually unknown outside the South, the majority requirement has not escaped considerable criticism on both fourteenth and Fifteenth Amendment grounds. See Evers v. State Board of Election Commissioners, S. D. Miss, 1971 327 F. Supp. 640; Boineau v. Thornton, E.D.S.C. 1964, 235 F. Supp. 175.

5. In essence, each candidate must limit his candidacy, in either a primary or a final election to a particular place on the ballot. Since the place requirement means absolutely nothing in terms of residence, its ultimate effect is to highlight the racial element where it does exist. (A. Jur. S. 38A)

6. Thus, in Dallas County it is entirely possible for each and every one of the district's eighteen representatives to reside in the same apartment complex. (A. Jur. S. 38A)

7. Essentially, the plaintiffs have shown that the DCRG, without the assistance of black community leaders, decides how many Negroes, if any, it will slate in the Democratic primary. 17 The DCRG then informs some black community leaders of its decision with respect to how many Negro candidates it will slate, and not how many candidates it will slate who are sympathetic to the problems and interests of the black community.

17 Since the Reconstruction Era, there have been only two blacks from Dallas County delegation to the Texas House of Representatives. In addition, these have been the only two blacks ever slated by the DCRG, and the first was not until 1966. (A. Jur. S. 40A)

8. State legislators from Dallas County, elected countywide, led the fight for segregation legislation during the decade of the 1950's. Indeed the record reveals that during the late 1950's not one member of the Dallas County Delegation voted against certain segregation measures introduced in the Texas House. (A. Jur. S. 42A)

9. As recently as 1970, the DCRG was relying upon racial campaign tactics in white precincts to defeat candidates who had the overwhelming support of the black community. So long as the organization that dominates the county-wide Democratic primary in Dallas County relies upon such a racial appeal to defeat black favored candidates, we think it highly unlikely that candidates elected on such a platform could seriously represent in the Texas Legislature the best interests of Dallas' black community. (A. Jur. S. 42A)

10. "While I deplore, as heretofore state, the intrusion of the Federal Courts in the legislative affairs of the democratically elected officials of the soverign State of Texas, **Whitcomb v. Chavis**, and its progeny, dictate that Federal Courts must do so where the preponderance of the evidence discloses that the State action "operates to dilute or cancel the voting strength of racial or political elements." In this connection, I personally feel that the evidence does in fact preponderate in this direction and that, based on this test, I concur with my colleagues that the Board's Reapportionmeent Plans for multi-member districts in Bexar and Dallas Counties are unconstitutional for the various reasons stated in the majority opinion." (A. Jur. S. 107A-108A)

11. Joseph E. Lockridge, Deceased, 1966 and Rev. Zan W. Holmes, Jr., 6-8-68 and 1970.

12. L. A. Bedford, Jr. 11-6-63, and before the formation of the DCRG in formal organization but he was not endorsed by any of the same groups that now make up the DCRG. Democrat. Berlaind Brashear, 1970, unendorsed by the DCRG. Democrat.

13. Joseph E. Lockridge, Deceased.

14. During the 1972 Democratic primary the DCRG endorsed and slated three Negroes on their slate. Three Negroes, selected by the Negro community, ran against the three Negroes slated by the DCRG. The Three Negroes selected by the Negro community, and particularly from the particular district that they ran from, won in each case and all three won in the general election. A fourth Negro candidate ran in a fourth district, losted, but did have an effect upon the candidate that was elected who was required to become sensitive to the Negro and make an active appeal to them against the Black Candidate and the DCRG candidate.

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